

ATTORNEY DOCKET NO.
062891.0872

PATENT APPLICATION
09/347,034

22

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action mailed January 13, 2005. At the time of the Office Action, Claims 1-3, 5-9, 11-15, 17-49, 51-55, and 57-85 were pending in the Application. Applicant amends Claims 1, 3, 38, 48, 49, 84, and 85 without prejudice or disclaimer and adds new Claims 86-88. The amendments to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. The new claims have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 102 Rejection

The Examiner rejects Claims 1, 3, 11, 17, 19, 36, 38-41, 47-49, 57, 63, 65, 82, and 84-85 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,434,616 issued to Urano et al. (hereinafter "*Urano*"). This rejection is respectfully traversed for the following reasons.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.¹ In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."² In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic."³ Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

Independent Claims 1, 3, 38, 48, and 49 recite, in general, a single network device that includes an additional forwarding agent and an additional service manager and the

¹ *Verdegal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

³ See MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis original*)).

⁴ See MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis original*)).

ATTORNEY DOCKET NO.
062891.0872

PATENT APPLICATION
09/347,034

23

single network device is coupled to one or more servers that are operable to satisfy a request generated by one or more clients that are coupled to a network disposed between the clients and the single network device, and wherein a portion of traffic generated by the clients, which is destined for one or more of the servers, is handled by the forwarding agent and another portion of the traffic is handled by the additional forwarding agent.

In contrast to these teachings, *Urano* discloses a method for monitoring abnormal behavior in a computer system. Turning to the architecture of *Urano* in more detail, when one of the manager computer 104, console computer 106, and operator 105 detects an abnormal condition, the manager computer 104 collects more detailed [log] information. (See *Urano*, Column 5, lines 37-40.) In the example offered by *Urano*, the manager computer 104 supposes that an event has occurred and collects the logs to verify it. The method purportedly reduces the load on the manager computer 104 necessary to make an analysis and minimizes network traffic. (See *Urano*, Column 6, lines 5-13.) However, nowhere in *Urano* is there any disclosure, teaching, or suggestion of multiple forwarding agents and multiple service managers being configured on a single device, whereby certain portions of traffic from clients are handled by the forwarding agents. Note that the forwarding agents are handling requests from clients, requests that are destined for one or more servers. *Urano* also fails to teach these limitations, as its architecture is incapable of processing any request from a client. Moreover, *Urano* fails to allocate traffic amongst forwarding agents, as recited in the above-identified claims. For at least this reason, these claims are patentable over *Urano*. Additionally, Claims 11, 17, 19, and 36 depend from Independent Claim 3 and are therefore also allowable over *Urano*. Also, Claims 39, 40, 41, and 47 and Claims 57, 63, 65, and 82 depend from Independent Claims 38 and 49 respectively and are therefore also allowable over *Urano* for similar reasons. Accordingly, ~~*Urano* does not anticipate Claims 1, 3, 11, 17, 19, 36, 38-41, 47-49, 57, 63, 65, 82, and 84-~~

85. Notice to this effect is respectfully requested in the form of an allowance of these claims. In addition, the corresponding dependent claims associated with these Independent Claims are also patentable over *Urano* for analogous reasons.

ATTORNEY DOCKET NO.
062891.0872

PATENT APPLICATION
09/347,034

24

Section 103 Rejections

The Examiner rejects Claims 2, 5, 20, 51, 62, and 66 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of U.S. Patent No. 6,243,748 issued to Arai (hereinafter "*Arai*"). The Examiner rejects Claims 12, 34-35, 37, 58, 80-81, and 83 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of U.S. Patent No. 6,407,997 issued to DeNap et al. (hereinafter "*DeNap*"). The Examiner rejects Claims 13 and 59 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of U.S. Patent No. 6,434,616 issued to Furuichi (hereinafter "*Furuichi*"). The Examiner rejects Claims 9, 14, 55, and 60 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of U.S. Patent No. 6,065,061 issued to Blahut et al. (hereinafter "*Blahut*"). The Examiner rejects Claims 15, 43, and 61-62 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of U.S. Publication No. 2002/0126622 issued to Kimball et al. (hereinafter "*Kimball*"). The Examiner rejects Claims 18 and 64 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of U.S. Patent No. 6,070,187 issued to Subramaniam et al. (hereinafter "*Subramaniam*"). The Examiner rejects Claims 21-33, 42, 44-46, and 67-79 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of U.S. Patent No. 6,172,980 issued to Flanders et al. ("*Flanders*"). The Examiner rejects Claims 7 and 53 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of *DeNap*. The Examiner rejects Claims 8 and 54 under 35 U.S.C. 103(a) as being unpatentable over *Urano* in view of *Furuichi*. These rejections are respectfully traversed for the following reasons.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.⁵ It is respectfully submitted that these rejected Claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each and every claim limitation.

The Independent Claims have been shown to be allowable in the §102 analysis above, as they are distinguishable over *Urano*. Furthermore, these secondary references do not provide any disclosure that is combinable with *Urano* that could inhibit the patentability of

⁵ See M.P.E.P. § 2142-43.

ATTORNEY DOCKET NO.
062891.0872

PATENT APPLICATION
09/347,034

25

the pending claims. Thus, the Examiner has failed to satisfy each of the elements of non-obviousness, which are required to support a proper §103 analysis according to MPEP §2143. Accordingly, these rejected claims are also allowable over the references cited by the Examiner based on, at least, this reason.

Therefore, all of the pending claims have been shown to be allowable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of the pending claims.

ATTORNEY DOCKET NO.
062891.0872

PATENT APPLICATION
09/347,034

26

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant submits herewith a check in the amount of \$790.00 to satisfy the request for continued examination fee of 37 C.F.R. §1.17(e). If this is not correct, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas Frame at 214.953.6675.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant

Thomas Frame

Thomas Frame
Reg. No. 47,232

Date April 7th, 2005

Customer No. **05073**